

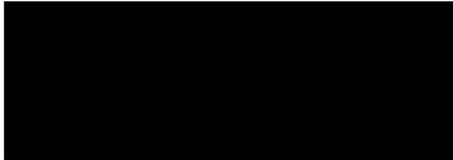
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

**PUBLIC COPY**



DT

DATE: **NOV 10 2011**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida corporation, states that it is engaged in real estate investment. It claims to be a branch or subsidiary of ADMI Administracao e Participacoes Ltda-Me, located in Brazil. The petitioner has employed the beneficiary in the position of president since March 2007 and seeks to extend his L-1A status for two additional years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director failed to consider that the beneficiary "is doing business with various independent contractors," and did not take into account "the great economic recession." Counsel submits documentary evidence in support of the appeal.

Upon review, and for the reasons discussed below, the AAO finds that the petition was properly denied based on the petitioner's failure to establish that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity. Further, the AAO finds insufficient evidence in the record to establish that the U.S. company is doing business as defined in the regulations.

## **I. The Law**

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

## II. Discussion

### A. *Employment in a Managerial or Executive Capacity*

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;

- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 17, 2009. The petitioner indicated on the Form I-129 that the company is engaged in real estate investment, has three employees, and has gross and net annual income of "0.00." In an attachment to the petition, the petitioner described the beneficiary's duties as president as follows:

- Control of the employees and future employees employed by the company;
- Training of employees (hiring and firing employees);
- Managing Finances;
- Planning, developing and implementing company strategies;
- Planning the future expansion of the business and the possibility of franchising the business;
- Developing and implementing policies for company operations;
- Determining mark-up percentages necessary to insure profit, based on estimated budget, profit goals and average rate of client acquisition;
- Developing policies and procedures for procurement of services;
- Oversee the negotiating of contracts with clients;
- Authorizing purchase of contract services based on estimates;
- Formulating pricing policies for sale of services;
- Review statements, invoices, bill of lading and insurance certificates;
- Coordinate the purchase of services, supervising the contact with the different vendors to attain the desired services;
- Plan business objectives, develop organizations polices [*sic*] and establish responsibilities and procedures for attaining objectives with the business operations of the internet services business;
- Review activity reports and financial statements to determine progress and status in attaining objectives and revises objectives and plans in accordance with current conditions;
- Direct and coordinate formulation of financial programs to provide funding of new or continuing operations to maximize returns on investments and increase productivity.

The petitioner's supporting evidence included a copy of its IRS Form 1120, U.S. Corporation Income Tax Return, for 2008. The petitioner reported gross receipts or sales of \$22,428, taxable income of \$2,710, and no expenses for salaries and wages, compensation of officers, cost of labor, or payments to contractors. The petitioner identified the type of business operated as export of parts and materials.

The petitioner also submitted a business plan. The petitioner indicates that the U.S. company was initially established as an exporter of roof supplies to South America, but now seeks to enter the real estate investment market by purchasing, renovating, and re-selling single family homes. The petitioner indicates that it will operate in southeast Florida, expects to purchase its first property in August 2009, and projects that it will

buy and sell a total of ten properties in 2009-2010. The petitioner outlines its intent to enter partnerships with sales brokers, financial institutions, law firms, building trade contractors, and real estate service firms, and indicates that it will initially operate with a president (the beneficiary), a general manager (██████████), a sales and marketing specialist (██████████), and ten to 15 contractors.

The director issued a request for additional evidence ("RFE") on June 30, 2009, in which he instructed the petitioner to provide the following: (1) a list of U.S. employees that identifies each person by name and position title; (2) a complete position description for all U.S. employees, including the beneficiary, including a breakdown of the number of hours devoted to each of the employee's job duties on a weekly basis; (3) an organizational chart for the U.S. company; and (4) evidence of wages paid to employees. The director noted that, based on the petitioner's IRS Form 1120 for 2008, it could not be determined whether the company has any employees.

In response, the petitioner submitted a letter in which it stated the following:

[The petitioning company's] activities and performance were affected in the past by the economic crisis that shook the world as many other companies worldwide. The construction industry in Brazil has been affected as well, such as the US construction market. As a result, [the petitioner] has changed its activities and became a Real Estate Investment company, as stated in the Business Plan presented.

[The beneficiary] realized a new market research and decided to change [the company's] activities and reinvest in the American Real Estate Market, where the recovery of the American economy is based and guaranteed.

In the past year, [the beneficiary and his spouse] were able to execute all the [company] activities necessary to keep the business active, without the necessity of hiring employees. In August 2009, [the company] starts officially its new activities as a Real estate Investment company, which is going to require in the beginning at least one hired employee working full time and several contractors.

The petitioner provided an organizational chart which depicts the beneficiary as president, with direct authority over a general manager (his spouse) and a sales/marketing employee (██████████). The chart indicates that the general manager will oversee building contractors and real estate firms, while the sales/marketing employee will work with financial institutions and sales/brokers/agents.

Finally, the petitioner submitted position descriptions for each named employee. The description provided for the beneficiary is essentially the same as that provided at the time of filing and will not be repeated. The petitioner indicated that the general manager will perform the following duties:

Coordinate the operation of the business; Control of the employees and future employees hired by the company; Training employees; Coordinate the purchase of services, supervising the contact with the different vendors to attain the desired services; Coordinate the services performed by the contractors hired; Coordinate company staff to accomplish the work

required to close sales; Coordinate the operation of the business; Coordinate acquisition of materials and supplies needed for the work; Other activities are assigned.

Finally, the petitioner indicated that the sales/marketing employee will perform the following duties:

Present and sell company products and services to current and potential clients; Prepare action plans and schedules to identify specific targets and to project the number of contacts to be made; Follow up on new leads and referrals resulting from field activity; Prepare presentations, proposals and sales contracts; Develop and maintain sales materials and current product knowledge; Establish and maintain current client and potential client relationships; Prepare paperwork to activate and maintain contracts services; Manage account services through quality checks and other follow-up ; Identify and resolve client concerns; Communicate new product and service opportunities, special developments, information or feedback gathered through field activity to appropriate company staff; Develop and implement special sales activities to reduce stock; Other duties are assigned.

On August 13, 2009, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition. In denying the petition, the director noted that the petitioner failed to provide all of the information requested in the RFE, including evidence of wages paid to employees and a detailed description and breakdown of the beneficiary's duties. The director concluded that, based on the evidence submitted and the size and nature of the U.S. company, it was reasonable to believe that the beneficiary would be primarily engaged in non-qualifying duties.

On appeal, counsel for the petitioner notes that the beneficiary was previously granted an L-1A visa and asserts that "because of his business character, [the beneficiary] is doing business with various independent contractors." Counsel further suggests that the director failed to consider the "great economic recession." Finally, counsel cites an unpublished AAO decision in support of the proposition that a person may be a function manager even if he or she is the sole employee of a company, if it is established that the company utilizes the services of independent contractors or if the business is complex.

In support of the appeal, the petitioner submits: (1) evidence of the ownership of the Brazilian company; (2) an organizational chart for the foreign entity; (3) the foreign entity's financial statement; (4) the proposed organizational chart for the U.S. entity previously submitted in response to the RFE; (5) the beneficiary's job description submitted at the time of filing; and (6) the petitioner's previously-submitted business plan for the years 2009 through 2013.

Upon review, and for the reasons discussed below, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

Here, the petitioner's description of the beneficiary's duties, while quite lengthy, fails to identify with any specificity the nature of his daily tasks, such that they could be classified as primarily managerial or executive. The petitioner indicates that the beneficiary will be "planning, developing and implementing company strategies"; "planning the future expansion of the business"; "developing and implementing policies and procedures for company operations"; planning "business objectives" and developing "organizational policies." These duties simply paraphrase elements of the statutory definition of executive capacity, and, while they may establish that the beneficiary possesses the appropriate level of authority within the company, such descriptions are insufficient to establish what the beneficiary primarily does on a day-to-day basis. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

Many of the remaining duties attributed to the beneficiary are related to supervision and training employees, managing the company's financial matters, and overseeing sales, purchase and contractual matters. However, as discussed further below, the petitioner has not established that the U.S. company, as of the date of filing the petition in June 2009, had any employees or that it was actively involved in any sales, purchase or other business activities. Rather, the petitioner indicates that it intends to commence business activities as a real estate investment firm in August 2009, approximately two months subsequent to the filing of the petition, and fails to document any business activities during the first half of 2009. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Therefore, the AAO cannot conclude that all of the listed responsibilities accurately represented the beneficiary's position as of the date of filing the petition. Furthermore, the job description contains a reference to the company's "internet services business" and "the possibility of franchising the business," references that appear to be inconsistent with the petitioner's description of both its previous construction materials export business and its intended real estate investment business. Overall, the position description is overly vague, nonspecific and provides little insight into what the beneficiary was actually doing on a day-to-day basis as the president of the petitioning company as of June 2009, at a time when the company appeared to be between business ventures.

In light of the above, the record does not support a conclusion that the beneficiary's duties are primarily managerial or executive in nature. The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987).

Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

Again, the critical facts to be examined are those that were in existence at the actual time of filing the petition. It is a long-established rule in visa petition proceedings that a petitioner must establish eligibility as of the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

While the petitioner submitted an organizational chart identifying the proposed structure of the company upon commencement of its real estate investment activities, the petitioner also concedes that the beneficiary and his spouse have been "able to execute all the [company] activities necessary to keep the business active, without the necessity of hiring employees." Therefore, the organizational chart and the proposed job descriptions for the positions of general manager and sales/marketing worker are speculative. The petitioner has not indicated in what capacity the beneficiary's spouse was working for the company at the time of filing, nor has it documented or identified the nature of the business as of June 2009. The three-tier structure presented in the organizational chart was clearly not in place at the time of filing, and the petitioner has not shown that the beneficiary was primarily engaged in the supervision of a subordinate staff comprised of managers, supervisors or professionals.

On appeal, counsel asserts that the beneficiary works primarily through independent contractors and cites an unpublished AAO decision to stand for the proposition that the sole employee of a company may qualify as a manager if the petitioner establishes that the business is complex and uses independent contractors. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision, nor does the record support counsel's assertion that the petitioning company regularly employed independent contractors at the time the petition was filed. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner proposes to use independent contractors when it commences its new business model; however, the petitioner has not shown that it was doing business at the time of filing, and thus did not establish that it was doing business through independent contractors. As noted above, the beneficiary unequivocally stated that he and his spouse have performed all functions for the company. Finally, while 8

C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Therefore, the petitioner has not established that the beneficiary is employed primarily as a "function manager." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a detailed description of the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Here, as discussed above, the petitioner has not articulated what essential function is managed by the beneficiary, nor has it established that the beneficiary's duties are primarily managerial.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* While the petitioner borrowed extensively from the statutory definition of executive capacity in drafting the beneficiary's position description, a review of the totality of the evidence submitted does not support a finding that the beneficiary was employed in an executive capacity, other than in position title, at the time the petition was filed. To the extent that the U.S. company was doing business as of June 2009, the beneficiary would have been the person primarily responsible for carrying out its day-to-day operations, including all non-qualifying duties.

The AAO acknowledges counsel's assertions that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). It is appropriate for USCIS to consider the size of the petitioning company in

conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Again, the petitioner acknowledged that it has been operating without any subordinate personnel to assist the beneficiary, who performs all the functions of the company with support of an unspecified nature from his spouse. Furthermore, as discussed further below, the petitioner has not established that it was doing business as defined in the regulations at the time the petition was filed. The petitioner's intent to essentially start over with a new business plan cannot be taken into consideration, as this is the company's second request for an extension of the beneficiary's status. Again, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In the instant matter, the petitioner has not established that it is operating at a level where it can employ the beneficiary in a predominantly managerial or executive position. Accordingly, the appeal will be dismissed.

#### *B. Doing Business*

The remaining issue in this matter is whether the petitioner established that it is a qualifying organization doing business in the United States.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulation at 8 C.F.R. § 214.2(l)(2)(H) defines doing business as follows:

*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner indicated on the Form I-129 that it is a "real estate investment" company with three employees, but it concedes that it has not actually hired any employees other than the beneficiary and perhaps his spouse, and that it has not commenced its planned business activities in the real estate investment field. The

petitioner also indicated that it has gross and net annual income of "0.00" as of June 2009 when the petition was filed.

The petitioner's 2008 IRS Form 1120 showed that the company was located in North Miami, Florida, with sales of \$22,428 and assets of \$5,863. The company indicated that it was engaged in the export of parts and materials. It paid no compensation to employees, officers, labor or contractors, paid rent of only \$685, reported no taxes, licensing or advertising costs, and paid only minimal expenses not indicative of a company that was fully operational throughout the year. For example, the petitioner reported \$161 in utilities, \$58 for telephone service, and \$97 in Internet expenses. The petitioner acknowledges that its performance and activities "were affected" and that it has "changed activities" from export of roofing materials to real estate investment. However, the petitioner must show that it has been continuously doing business up to the date of filing.

The record contains no evidence of any business activities conducted by the U.S. company in 2009. The petitioner indicates on Form I-129 that the company is now located in South Plainfield, New Jersey at what appears to be the beneficiary's residential address. It has not provided evidence that the company, a Florida corporation, has registered with the New Jersey Secretary of State such that it is authorized to conduct business in New Jersey. The petitioner has submitted recent bank statements for the petitioning company which reflect withdrawals for the personal expenses of the beneficiary and his spouse. There is nothing in the bank statements indicative of any ongoing activities associated with the purchase and export of building and roofing materials.

Therefore, the AAO finds that the petitioner has failed to demonstrate that the U.S. company is doing business as required by the regulations, as the record contains no evidence that the company was engaged in the regular, systematic, and continuous provision of goods and/or services as of June 2009 when the petition was filed. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H). The petitioner essentially intends to restart its operations in August 2009. However, as discussed above, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

### **III. Conclusion**

The AAO acknowledges that USCIS previously approved an L-1A nonimmigrant petition filed on behalf of the beneficiary. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology*

*Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on the petitioner's failure to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In both the request for evidence and the final denial, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. Further, the record shows that there has been a change in circumstances since the prior petition, in that the petitioner failed to demonstrate that it was continuing to do business at the time of filing the instant request for an extension of the beneficiary's status. Any previous petition approved based on the same minimal evidence of the beneficiary's eligibility would have constituted gross error on the part of the director.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.